

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:	:	
	:	
ARECIBO COMMUNITY HEALTH	:	CASE NO. 91-04594 (GAC)
CARE, INC.	:	
	:	
Debtor	:	CHAPTER 7
	:	

DECISION AND ORDER

I. Procedural Background

Pending before the Court is a motion for summary judgment filed by the debtor Arecibo Community Health Care, Inc. ("debtor") (Docket #568), an opposition filed by the Treasury Department of the Commonwealth of Puerto Rico ("Treasury") (Docket #579) and the Trustee's position regarding debtor's motion for summary judgment (Docket #580). On July 12, 1991, the debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code (Docket #1). In the Claims Register, Treasury appears filing five different proofs of claim.

On October 28, 1991, Treasury filed Proof of Claim #38, with an unsecured priority in the amount of \$364.24, and an unsecured nonpriority in the amount of \$22.43, for the total amount of \$386.67, for taxes owed relating to year 1989. On December 30, 1992, Treasury filed a second Proof of Claim #257, with an unsecured priority in the amount of \$513,411.08, and an unsecured nonpriority the amount of \$209,340.16, for the total amount of \$722,751.24, for taxes owed relating to years 1985-1990. On April

26, 1993, Treasury filed a third Proof of Claim #260, with an secured priority in the amount of \$513,046.84 and an unsecured priority the amount of \$219,470.13, for the total amount of \$732,516.97, for taxes owed relating to years 1985-1990. On May 12, 1994, Treasury filed a fourth Proof of Claim #282, with an unsecured nonpriority in the amount of \$880,596.08, for taxes owed relating to years 1985-1990.

On March 19, 1996, the Court entered an order disallowing Proof of Claim #268 and holding that claims #38, #257, #260 and #282 were the subject of an administrative proceeding pending before the Puerto Rico Department of Treasury and that payment was deferred pending resolution of the proceedings (Docket #302). On February 25, 1997, a motion was filed by the trustee submitting a settlement agreement under seal and requesting permission from the Court to reimburse payment on behalf of the estate to the debtor (Docket #348). On March 25, 1997, an Order was entered granting the settlement agreement unless the U.S. Trustee or a party in interest filed an objection within thirty days (Docket #348). No objections were filed.

On December 16, 2004, seven years later, the debtor filed a motion requesting turnover of assets asserting that all the creditors had been paid (Docket #498 and #511). On December 6, 2005, the Court entered an order granting the reimbursement to the debtor, unless an objection was filed by Treasury (Docket #528). On December 16, 2005, the trustee filed a Notice to the Treasury

asserting that it was close to making a final distribution to all parties in interest and that there was \$2,000,000.000 to be reimbursed to the debtor (Docket #527).

On March 3, 2006, the Treasury filed a motion to comply with docket #527, informing that it evaluated the case and attaching a Notice of Indebtness in the amount of \$9,762,755.12 (Docket #547). On the same day, Treasury filed a fifth amended Proof of Claim #686, with an unsecured nonpriority in the amount of \$373,496.70 and an unsecured priority the amount of \$9,389,259.42, for the total amount of \$9,762,755.12, for taxes owed relating to years 1985-1990. On April 18, 2006, the Trustee filed an objection to the amended Proof of Claim #686 (Docket #554). On April 21, 2006, the debtor filed an objection to Proof of Claim #686 (Docket #555). On June 7, 2006, the Treasury filed a reply to both objections (Docket #563).

On August 14, 2006, the debtor filed a motion for summary judgment (Docket #568). On September 22, 2006, the Treasury filed an opposition (Docket #579). Finally, the Trustee filed a motion stating his position regarding debtor's motion for summary judgment (Docket #580).

II. Factual Background

Treasury filed five proofs of claim with different amounts. On February 25, 1997, a settlement agreement under seal was filed with the Court (Docket #348). The settlement was approved by the Court and no objections were filed (Docket #348). Then, on March 3, 2006,

nine years after the settlement agreement, when the Court granted the debtor's request for reimbursement of the estate funds, Treasury filed a Notice of Indebtness and amended Proof of Claim #686 in the amount of \$9,762,755.12 (Docket #547).

III. Arguments of the Parties

A. Debtor

The debtor contends that it entered into a settlement agreement with Treasury on December 18, 1996, with respect to the same amounts now claimed in Proof of Claim #686, for tax years 1985 to 1990. It also asserts that the stipulation was approved by the Court on March 25, 1997, and because the claim has been settled and the matter has already been adjudicated by the court, it is *res judicata*. Thus, Treasury fails to state a claim upon which relief may be granted.

The debtor submits the settlement agreement as an exhibit, asserting that it covers the same amounts now claimed in Proof of Claim #686 (Docket #568, Exhibit A). The debtor maintains that it tendered a check for \$100,000.00 to the Treasury in full payment of the taxes owed from 1985 to 1990 (Docket #568, Exhibit B). The debtor asserts that after it paid the Treasury, it issued a receipt in the amount of \$100,000.00 (Docket #568, Exhibit C) and that on January 28, 1997, the Treasury issued a statement of account showing that there was no debt for the tax period of 1985 to 1990 (Docket #568, Exhibit D). The debtor also asserts that the Trustee submitted the stipulation with Treasury for approval by the Court

and the Court approved the stipulation on March 25, 1997 (Docket #348). Finally, the debtor maintains that after the filing of Proof of Claim #686, on March 17, 2006, Treasury issued a certificate of no debt with respect to the amounts now claimed (Docket #568, Exhibit E). Thus, the debtor concludes that there is no genuine issue of material fact and that the motion for summary judgment should be granted.

B. Treasury

Treasury asserts that Proof of Claim #686 filed on March 3, 2006, amended Proof of Claim #257 filed on December 30, 1992, and Proof of Claim #38 filed on October 28, 1991. Thus, the amended Proof of Claim #686 supersedes all other claims filed and it is considered timely filed.

Treasury contends that even though Treasury's officers subscribed an offer and compromise agreement reducing the amount of Treasury's pre-petition priority tax liability, the agreement was an administrative error because it failed to comply with the legal requirements under the Internal Revenue Code of Puerto Rico. Thus, Treasury states that the agreement is an administrative error and it is not impeded from correcting the mistake. It asserts that the ample ability to perform this correction was reaffirmed by the Supreme Court of Puerto Rico in Santiago Declet y Albanesi v. Departamento de la Familia, 2001 J.T.S. 8, 2001. In citing the Supreme Court of Puerto Rico, Treasury states that: "an administrative error does not create a rule of law that obliges an

agency and impedes the correction."

Treasury asserts that: "[o]rdinarily, unlawful or ultra vires promises are nonbinding when made by public officials ... when functioning in their governmental capacity." Freeman v. Poling, 175 W.Va. 814 (W.Va. 1985). Thus, the estoppel doctrine cannot apply to a governmental agency because there is a highly significant rationale, public interest and a barricade that defends the rights of the collectivity. It also contends that Puerto Rican jurisprudence has adopted the collateral estoppel doctrine as a version of the res judicata doctrine.

Treasury concludes that the equitable doctrines of collateral estoppel and res judicata, are inapplicable to the case at bar because these doctrines ordinarily are not applicable against the state or governmental entities, particularly, where the controversy is vested with an utmost public interest: the collection of taxes.

Finally, Treasury asserts that the offer and compromise agreement signed on December 18, 1996, is undergoing an administrative investigation which may lead to its invalidation. Thus, Treasury requests that the Court allow the amended Proof of Claim #686. Treasury contends there are material facts in dispute and thus, the debtor's motion for summary judgment should be denied.

C. Trustee

The trustee objects to the amended Proof of Claim #686 because he asserts that the original claim was paid through a settlement

agreement executed between debtor's president and the Treasury in December of 1996.

The trustee has two main concerns. The first relates to the availability of funds to pay the amended claim and the second deals with the issues as to whether the claim may be filed or amended after partial distributions have been made. The trustee states that if the claim is allowed, a potential administrative crisis may result because the claim amount exceeds the available funds, as it would be paid under 11 U.S.C. §726(a) as a priority. The trustee asserts that the problem arises with the distributions made before the claim was amended. These distributions include unsecured general claims and dividends to stockholders. The trustee maintains that, in theory, he would have to recover the funds already distributed, which may be impossible to accomplish.

The trustee also asserts that timely filed proofs of claim are *prima facie* evidence of the validity and amount of the claim and that amendments to claims are retroactive to the original date of filing. Nonetheless, the court always has the ability to rule on claims allowability, timeliness and the extent of the bar dates. He asserts that a problem exists regarding the timeliness of the claim, regardless of the appropriateness of the amendment. The trustee argues that the reconsideration of both allowed and disallowed claims may occur at any time before a case is closed but, in such reconsideration the court must weigh the extent and reasonableness of any delay, or prejudice to any party in interest,

the effect on efficient court administration and the moving party's good faith.

Finally, the trustee asserts that the filing of an amended claim after so much time has elapsed from the filing of the original claim, after the settlement agreement and after three distributions have been made, may well constitute waiver under the doctrine of laches. The trustee asserts that Treasury has alleged certain irregularities in the execution of the settlement but, it has not disclosed the detail of such irregularities, which Treasury has to show before such extraordinary measures are taken. The trustee requests that the Court consider its position in determining the objection to the amended claim.

IV. Discussion

A. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56(c), made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 7056, summary judgment is available "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corporation v. Catrett, 477 U.S. 317 (1986) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)). As to issues on which the movant, at trial, would be compelled to carry the burden of proof, it must identify those portions of the pleadings which it believes

demonstrates that there is no genuine issue of material fact. In re Edgardo Ryan Rijos & Julia E. Cruz Nieves v. Banco Bilbao Vizcaya & Citibank (In re Rijos), 263 B.R. 382, 388 (B.A.P. 1st Cir. 2001).

B. Closing Agreements with the Treasury Department

The Internal Revenue Code of 1994, authorizes the Secretary of Treasury to enter into written payment agreements with tax payers. P.R. Law Ann. Tit. 13 § 8127. The law provides, in pertinent part:

(a) The Secretary is authorized to enter into written payment agreements by which he agrees to set aside any assessed tax and additions, including civil or criminal penalties, that are applicable to a case in respect to any tax imposed under former §§ 3001 et seq., §§ 5001 et seq., and §§ 7001 et seq. of this title, before it is referred to the Justice Department for formulation of charges.

P.R. Law Ann. Tit. 13 § 8127. The general requirements of the Closing Agreements, as set forth in § 8127, are:

(1) General requirements.-- Any payment commitment made pursuant to the provisions of this subsection shall be authorized by the Secretary of the Treasury or his authorized representative who shall justify the reasons for the granting of the payment agreement and provide for the case file the following information:

- (A) Amount of assessed tax.
- (B) Amount of interest and additions to the tax imposed by law.
- (C) Actual amount to pay pursuant to the terms of the payment commitment.
- (D) Analysis of the financial condition of the taxpayer showing payment capacity of the amount established in the payment commitment.
- (E) Any other document or evidence required by the Secretary under rules and regulations to be prescribed by the Secretary.

P.R. Law Ann. Tit. 13 § 8127.

The closing agreement between the Treasury and the debtor complies with all the requites as set forth in § 8127, *supra*: the agreement was made by two officials representing the Secretary of Treasury, Manuel Diaz Saldaña; it states the amount of the assessed tax, \$6,341,145.02, including the interest; the actual amount to pay, \$100,000.00; and mentions the debtor's special circumstances, tax payer had filed a Chapter 7 petition for bankruptcy (Docket #568, Exhibit A). The agreement was executed pursuant to its terms therein described: the debtor paid to the order of the Secretary of Treasury the amount of \$100,00.00 in full payment of the tax assessed for years 1985 to 1990 in the amount of \$6,341,145.02 (Docket #568, Exhibit A).

Once all the requirements are fulfilled, § 8126(b) states that the agreement shall be final. The law provides in pertinent part that:

(b) Finality.-- Such agreement once executed shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon nor the agreement modified by any officer, employee, or agent of the Commonwealth of Puerto Rico, and

(2) in any suit, action, proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded.

(c) Penalties.-- The penalties for violations

of closing agreements are contained in § 8058 of this title.

P.R. Law Ann. Tit. 13 § 8126.

The statute that regulates the closing agreements is specific. It states that once the agreement is executed it "shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact," the agreement may not be modified. P.R. Law Ann. Tit. 13 § 8126. In the present case, Treasury has not alleged fraud, malfeasance or a misrepresentation by the debtor. Treasury's allegation is an administrative error. It alleges that the agreement fails to comply with the legal requirements under the Internal Revenue Code but, fails to mention or explain how. Furthermore, Treasury asserts that there is an ongoing investigation which may lead to the invalidation of the closing agreement but, fails to provide an update.

The Court examined all the documentary evidence presented by the parties. The settlement agreement covers the tax years 1985, 1986, 1987, 1988, 1989, 1990 in the amount of \$6,341,145.02 (Docket #568, Exhibit A). It is the same tax years represented in Treasury's amended Proof of Claim #686. No objections were filed to the stipulation and it was approved by the Court. The debtor paid Treasury \$100,000.00 in full payment of Proof of Claim #282 (Docket #568, Exhibit B). The certificate of no debt expedited by Treasury appears to be authentic (Docket #568, Exhibit E). Thus, the Court concludes that Treasury's mere allegations, without supporting

evidence, are insufficient to revoke the settlement agreement entered into between the parties nine years ago and approved by the Court.

In the case of Municipio de San Juan v. Professional Research & Community Services, (2007 TSPR 95), the Puerto Rico Supreme Court held that once a stipulation has been approved by the Court, then the stipulation is subject to the *res judicata* doctrine. In the present case, the settlement stipulation entered between the parties leaves no room for interpretation. The parties entered into an agreement, which was in accordance with law and the Court approved the agreement and thus, it is subject to *res judicata*.

V. Conclusion

A party seeking summary judgment bears the initial burden and must identify those portions of the pleadings which it believes demonstrates that there is no genuine issue of material fact. Once the movant meets its burden, the burden of proof shifts to the party opposing the motion for summary judgment to establish that there are questions of material fact. 10 Collier on Bankruptcy, § 7056.05, p. 7056-7 (15th ed. revised, Lawrence P. King ed., 2006). In the present case, the debtor filed a motion for summary judgment and Treasury opposed the request. The settlement agreement, the certificate of no debt, the check made payable to Treasury, in the amount of \$100,000.00, and the legal documents introduced by both parties in their respective motions do not raise substantial issues of fact regarding whether the settlement agreement covered the

years 1985-1990, now claimed again by Treasury in Proof of Claim #686. This Court concludes that the debtor has met its burden of showing that there are no genuine issue of material facts. Likewise, the Court concludes that Treasury has not met its burden of proving that there are genuine issues of material facts in dispute or that the settlement agreement is invalid or that it should be revoked.

ORDER

WHEREFORE IT IS ORDERED that the Motion for Summary Judgment (Docket #568) filed by Arecibo Community Health Care, Inc. shall be, and it hereby is **GRANTED**.

SO ORDERED.

In San Juan, Puerto Rico, this 14th day of September, 2007.

/s Gerardo A. Carlo-Altieri

GERARDO A. CARLO-ALTIERI
Chief, U.S. Bankruptcy Judge